

1 GIBSON, DUNN & CRUTCHER LLP
2 MARK A. PERRY (*pro hac vice*)
3 1050 Connecticut Avenue, N.W.
4 Washington, DC 20036
5 Telephone: 202.955.8500
6 mperry@gibsondunn.com

7 GIBSON, DUNN & CRUTCHER LLP
8 JEFFREY T. THOMAS (*pro hac vice*)
9 BLAINE H. EVANSON (*pro hac vice*)
10 JOSEPH A. GORMAN (*pro hac vice*)
11 CASEY J. MCCRACKEN (*pro hac vice*)
12 3161 Michelson Drive
13 Irvine, CA 92612-4412
14 Telephone: 949.451.3800
15 jtthomas@gibsondunn.com
bevanson@gibsondunn.com
jgorman@gibsondunn.com
cmccracken@gibsondunn.com

16 GIBSON, DUNN & CRUTCHER LLP
17 SAMUEL LIVERSIDGE (*pro hac vice*)
18 ERIC D. VANDEVELDE (*pro hac vice*)
19 333 South Grand Avenue
20 Los Angeles, CA 90071-3197
21 Telephone: 213.229.7000
22 sliversidge@gibsondunn.com
evandavelde@gibsondunn.com

23 *Attorneys for Defendant*
24 *Rimini Street, Inc.*

25 RIMINI STREET, INC.
26 DANIEL B. WINSLOW (*pro hac vice*)
27 6601 Koll Center Parkway, Suite 300
28 Pleasanton, CA 94566
Telephone: 925.264.7736
dwinslow@riministreet.com

RIMINI STREET, INC.
JOHN P. REILLY (*pro hac vice*)
3993 Howard Hughes Parkway, Suite 500
Las Vegas, NV 89169
Telephone: 336.908.6961
jreilly@riministreet.com

HOWARD & HOWARD ATTORNEYS PLLC
W. WEST ALLEN (Nevada Bar No. 5566)
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, NV 89169
Telephone: 702.667.4843
wwa@h2law.com

29 ORACLE USA, INC., et al.,
30 Plaintiffs,
31 v.
32 RIMINI STREET, INC., et al.,
33 Defendants.

CASE NO. 2:10-CV-00106-LRH-VCF

**RIMINI STREET, INC.'S
OPPOSITION TO ORACLE'S
MOTION FOR SANCTIONS**

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

In an astounding display of incivility and attempt at misdirection, Oracle seeks sanctions against Rimini and its counsel for filing a motion to *enforce* the separation orders between *Rimini I* and *Rimini II* that this Court previously entered *at Oracle's request*—orders that Oracle is now openly *violating*. Rimini cannot be sanctioned for asking this Court to enforce its own orders, and Oracle's Motion for Sanctions must be denied.

At Oracle’s urging, this Court ruled that “Rimini’s new service support model [*i.e.*, Process 2.0] is not relevant to any claim or issue in [*Rimini I*]” and that “all claims, issues, and evidence related to the new support model are being addressed solely in [*Rimini II*.]” ECF No. 723 at 3. In Oracle’s own words, this order “established a clear dividing line” between the *Rimini I* and *Rimini II* processes (“Process 1.0” and “Process 2.0,” respectively). ECF No. 593 at 11; *id.* at 13 & n.6. Consistent with its prior orders and Oracle’s repeated representations, this Court entered a permanent injunction prohibiting “*only acts that have already been determined to be unlawful*,” *i.e.*, Process 1.0. ECF No. 1164 at 9 (emphasis added).

With the recent service of Oracle’s expert’s “contempt” report, Oracle has confirmed that it is *violating* the separation orders by seeking to enforce the injunction against Rimini’s new processes (*i.e.*, Process 2.0), which have never been adjudicated and are the subject of pending summary judgment motions in *Rimini II*. Despite flouting the Court’s separation orders, Oracle cannot bring itself to confront their actual content or import. Rather, in its Motion for Sanctions, Oracle continues to ignore these orders actually entered in this case, asserting instead that Rimini’s Motion to Enforce is duplicative and vexatious because this Court and the Ninth Circuit allegedly already held—seven times, according to Oracle—that Process 2.0 is covered by the *Rimini I* injunction. ECF No. 1348 (“Mot.”) at 2. That is false. Although Rimini has consistently taken the position—throughout this litigation, in different contexts and at different procedural stages, in filings with this Court and with the Ninth Circuit—that the injunction is limited by the separation between *Rimini I* and *Rimini II* that this Court previously ordered, *no court* has ever ruled on the issue of whether the Court’s separation orders and judgment must be followed, or that the injunction can be enforced against Process

1 2.0. *See* ECF No. 1323 at 14–16; ECF No. 1347 at 2–5. Indeed, Ninth Circuit Judge Graber
 2 specifically said that Rimini’s new processes were “not in front of us.” Oral Argument at 2:10–
 3 2:25, *Rimini I*, No. 18-16554 (9th Cir. July 12, 2019), <https://tinyurl.com/sbyw42x>.

4 No court has ever had to rule whether Oracle is violating the separation orders because,
 5 while Rimini repeatedly *predicted* that Oracle would do so, Oracle assured the Court that it
 6 would never do such a thing. Oracle said it would not seek to hold Rimini in contempt based
 7 on “conduct that is currently at issue in *Rimini II*” (*i.e.*, Process 2.0) and that to do so would be
 8 “bad faith” because it would “go beyond the clear terms of the injunction.” ECF No. 1174 at
 9 17. But that is exactly what Oracle is doing now. For example, Oracle expressly agreed that
 10 processes involving the cloud are “at issue in *Rimini II* and [not] at issue in *Rimini I*,” and
 11 therefore would not be covered by the injunction, which only “codifies what [the Court] already
 12 ruled.” ECF No. 1040 at 143:14–144:1. Yet now, Oracle takes the opposite position on that
 13 precise issue, falsely asserting that this Court ruled—contrary to Oracle’s own arguments—that
 14 the injunction *does* apply to cloud hosting. Precluding Oracle from such litigatory shenanigans
 15 is one of the reasons Rimini felt compelled to file its Motion to Enforce.

16 Oracle has no coherent basis for opposing Rimini’s Motion to Enforce, as the briefing
 17 on that motion makes clear. Apparently believing a good offense can mask an infirm defense
 18 (as well as Oracle’s own inconsistent positions and violation of the separation orders), Oracle
 19 has instead sought sanctions against Rimini and its counsel for having the temerity to ask the
 20 Court to enforce its own orders. But “[t]he proper means of attacking” Rimini’s Motion to
 21 Enforce “is through cogent legal argument in opposition papers, not through Rule 11.” *United*
 22 *States v. City & Cnty. of San Francisco*, 132 F.R.D. 533, 537 (N.D. Cal. 1990), *aff’d*, 976 F.2d
 23 1536 (9th Cir. 1992). There is absolutely no basis for sanctions against Rimini or its counsel
 24 under Rule 11, 28 U.S.C. § 1927, or the Court’s inherent authority. A litigant cannot be
 25 sanctioned for asking a court to enforce its own orders—and it would be an abuse of discretion
 26 to conclude otherwise. Indeed, the fact that Oracle would even bring such a motion speaks
 27 volumes about the lack of professionalism in its own approach to this litigation—and not that
 28 of Rimini or its counsel.

II. BACKGROUND

Oracle’s description of the posture of this case leading up to Rimini’s Motion to Enforce and Oracle’s Motion for Sanctions is highly misleading and incomplete. A more detailed background is set forth in Rimini’s Motion to Enforce (*see* ECF No. 1323 at 2–14), but the key facts regarding the parties’ arguments and the rulings of this Court and the Ninth Circuit are highlighted below.

A. After Ruling that Process 2.0 Is “Not Relevant” to *Rimini I* and Will Be “Addressed Solely” in *Rimini II*, the Court Entered Judgment and the Original Injunction

The Court’s original injunction, entered in October 2016 (*see* ECF No. 1065), was the product of years of litigation and reflected the Court’s prior rulings about the scope of this case—none of which is addressed by Oracle in its Motion for Sanctions.

After Rimini transitioned its support processes from Process 1.0 to Process 2.0 to conform to this Court’s summary judgment rulings in 2014, Rimini asked that evidence regarding Process 2.0 be produced in this case so that it could show the jury how it changed its support model to comply with the Court’s orders in good faith, and to demonstrate that any supposedly infringing aspects of its former Process 1.0 were unintentional. *See* ECF No. 488 at 12–20. But at *Oracle’s* repeated insistence, the Court denied Rimini’s request. In excluding all evidence regarding Process 2.0 from this case, this Court ruled that Process 2.0 “is not relevant to any claim or issue in this action,” and that “all claims, issues, and evidence related to the new support model are being addressed *solely* in [*Rimini II*].” ECF No. 723 at 3 (emphasis added).

This ruling continues to be the law of the case, setting forth a clear delineation between *Rimini I*/Process 1.0 and *Rimini II*/Process 2.0, and becoming the basis for Rimini’s consistent position in district court and appellate filings related to the scope of the injunction. In post-trial proceedings, for example, Rimini raised the argument that Oracle’s proposed injunction was vague and overbroad as to Process 1.0 itself, and that the clear purpose of this ambiguity was to sweep in Process 2.0 in violation of this Court’s orders. *See, e.g.*, ECF No. 1055 at 3–4. Oracle vehemently denied both that the injunction in fact swept so broadly or that Rimini had

any evidence of Oracle’s intent to violate this Court’s orders. As Oracle argued to this Court, “Rimini objects that various provisions in Oracle’s proposed injunction would affect Rimini’s current business processes, which Oracle is challenging in the *Rimini II* lawsuit. *But Rimini points only to conduct that the Court and jury have found to constitute infringement.*” ECF No. 907 at 1 (emphasis added). At oral argument, Oracle doubled down on its assurance to the Court that the injunction in fact did not reach Process 2.0. For example, on the topic of cloud computing, counsel for Oracle stated to this Court:

I acknowledge that cloud computing is at issue in *Rimini II* and it wasn’t at issue in *Rimini I*. But we’re entitled to an injunction that codifies what you already ruled. And then in *Rimini II* we can fight with each other whether cloud constitutes the customers’ facilities. We don’t believe it does. But that’s the fight we can have in *Rimini II*.

But the fact that cloud computing might be in *Rimini II* doesn’t mean that you should stop and not enter an injunction based on decisions you’ve already made, conduct that was already adjudicated in *Rimini I*. That’s what we’re asking you to do, and our proposed injunction tracks that.

ECF No. 1040 at 143:14–144:1. Consistent with those representations, the Court sided with Oracle, holding that the injunction was not overbroad because it “*seeks to enjoin only acts that have already been determined to be unlawful.*” ECF No. 1049 at 8 (emphasis added).

On appeal, when it came to the separation between Process 1.0 and Process 2.0, Oracle again told the Ninth Circuit the same thing it told this Court in order to secure the injunction: that Process 2.0 was reserved for *Rimini II*. Indeed, when pressed by the panel, counsel for Oracle conceded that some aspects of Process 2.0 were “probably” lawful, but assured the Court that “disputes about” Process 2.0 “can be resolved” in *Rimini II*. ECF No. 1347-3 at 25:14, 17–20. The Ninth Circuit vacated the injunction because the Court had relied on subsequently vacated computer hacking verdicts in entering it, and remanded to this Court for further proceedings. *Oracle USA, Inc. v. Rimini Street, Inc.*, 879 F.3d 948, 964 (9th Cir. 2018).

B. Based on Oracle’s Representation that It “Enjoin[s] Only Acts that Have Already Been Determined to Be Unlawful,” the Court Entered the Renewed Injunction

On remand, Oracle sought to renew the injunction, with only minimal changes to the text. In response, Rimini made a two-fold argument.

1 First, Rimini argued that the injunction was vague and overbroad as to Process 1.0
 2 because, for instance, the injunction imposed a “facilities” restriction for certain product lines
 3 that was inconsistent with the license agreements, barred Rimini from “accessing” source code
 4 on other product lines, and covered the “unadjudicated” conduct of distribution and derivative
 5 works. ECF No. 1130 at 18–23. Rimini also argued that as to Process 1.0, the injunction was
 6 overbroad by attempting to cover “cross-use” because, as Rimini read the Ninth Circuit’s
 7 opinion, the Ninth Circuit had upheld infringement liability as to “cross-use” only for certain
 8 product lines and certain clients, expressly not reaching other product lines and types of clients
 9 in its opinion. *Id.* at 5, 8. These arguments about the set of service processes formed the basis
 10 of *Rimini I*—*i.e.*, Process 1.0.

11 Second, with respect to Process 2.0, Rimini again raised its concern that what Oracle
 12 was *really* trying to accomplish, despite its protestations to the contrary, was to use vague and
 13 broad language to bring Process 2.0 within the scope of the injunction. *See id.* at 15–17.
 14 Oracle’s response to *that* argument was crystal clear: Oracle stated that “Rimini *only* would be
 15 barred from doing things that it purportedly is no longer doing” (ECF No. 1117 at 18), that the
 16 injunction was “tailored to prevent future occurrences of the conduct *adjudicated to constitute*
 17 *copyright infringement in this case*” (*id.* at 23 (emphasis added)), and that the injunction “just
 18 track[s] the scope of the infringing conduct” adjudicated in *Rimini I* (ECF No. 1158 at 30:16–
 19 17). Indeed, as Rimini continued to raise its fears that Oracle would seek to use the injunction
 20 to cover Process 2.0, Oracle repeatedly dismissed those concerns, assuring the Court that it
 21 would never engage in such “bad faith”:

22 Rimini asserts ‘Oracle will attempt to use the injunction to challenge conduct
 23 that is currently at issue in *Rimini II*’ and will bring ‘contempt proceedings.’ In
 24 other words, **Rimini believes that Oracle will act in bad faith, *i.e.*, by seeking
 to go beyond the clear terms of the injunction if it is not stayed.** But Rimini
 provides no basis whatsoever for that speculative aspersion.

25 ECF No. 1174 at 17 (citations omitted, emphasis added). Accordingly, when this Court entered
 26 the renewed injunction, it expressly did so, consistent with the separation orders, on the grounds
 27 that Oracle was “seek[ing] to enjoin only acts that have already been determined to be unlawful,”
 28

1 *and which have been affirmed on appeal.”* ECF No. 1164 at 9 (emphasis added). The Court
 2 could not have been more clear in making this point.

3 **C. The Ninth Circuit Affirmed the Renewed Injunction While Recognizing the
 4 Separation Between *Rimini I* and *Rimini II***

5 As Oracle acknowledges, Rimini’s second appeal to the Ninth Circuit centered on
 6 whether the ““injunctive relief [was] moot because the acts adjudicated as infringing stopped
 7 long ago.”” Mot. at 6. Rimini argued that the injunction was moot, and therefore no injunction
 8 could or should issue, because Rimini had ceased Process 1.0, and Process 2.0 was the subject
 9 of *Rimini II*. See Rimini Opening Br. at 33 & n.*, 40–44, *Rimini I*, No. 18-16554 (9th Cir. Nov.
 10 26, 2018), ECF No. 12. Rimini also raised the same vagueness and overbreadth arguments it
 11 had raised before this Court—that the injunction was overbroad *as to Process 1.0 itself* and was
 12 inconsistent with what Rimini understood to be the basis of the Ninth Circuit’s affirmance on
 13 infringement liability as to certain products and certain client types. *Id.* at 40–44. Thus, the
 14 overbreadth issue that was litigated—and that the Ninth Circuit addressed in its opinion—was
 15 limited to whether the injunction could cover aspects of *Process 1.0* that were not specifically
 16 the basis for the jury’s infringement findings that were affirmed on appeal. See Oracle
 17 Answering Br. at 39–41, *Rimini I*, No. 18-16554 (9th Cir. Jan. 23, 2019), ECF No. 23.

18 The Ninth Circuit agreed with some of those arguments, holding the injunction was
 19 overbroad as to Process 1.0 because it “restrict[ed] ‘local hosting’ for the J.D. Edwards and
 20 Siebel licenses,” and because it prohibited “access[ing] [JDE] source code” even though
 21 “accessing” is “not an infringing activity under the Copyright Act.” *Oracle USA, Inc. v. Rimini
 22 Street, Inc.*, 783 F. App’x 707, 710–11 (9th Cir. 2019). But at no point did Oracle argue that
 23 Process 2.0 was covered by the injunction, nor did the Ninth Circuit hold any such thing (as
 24 Oracle now states). Indeed, when Rimini raised its concern that Oracle would later argue that
 25 Process 2.0 is covered by the *Rimini I* injunction in *other* proceedings, *i.e.*, *this* proceeding,
 26 Judge Graber responded, “[b]ut that’s not in front of us,” to which Rimini’s counsel answered,
 27 “I agree.” Oral Argument at 2:10–2:25, *Rimini I*, No. 18-16554 (9th Cir. July 12, 2019),
<https://tinyurl.com/sbyw42x>.

1 **D. Under the Guise of Injunction “Compliance,” Oracle Sought Discovery into**
 2 **Process 2.0**

3 Oracle has now flip-flopped, taking the position that the injunction can be enforced
 4 against Process 2.0 and, more still, that this Court and the Ninth Circuit have already ruled as
 5 much.

6 In February 2019, Oracle initiated so-called contempt “compliance” proceedings and
 7 sought discovery into Rimini’s compliance with the injunction. *See* ECF No. 1199. Many of
 8 Oracle’s discovery requests were aimed at Process 2.0 practices—not previously adjudicated—
 9 that are directly at issue (and indeed pending summary judgment) in *Rimini II*, including
 10 whether Rimini can lawfully provide support to clients that use the cloud. Accordingly, Rimini
 11 opposed Oracle’s request for discovery, underscoring its concerns that permitting discovery
 12 into Process 2.0 under the guise of injunction “compliance” would affront the Court’s
 13 separation orders and the orderly and efficient adjudication of *Rimini II*. *See generally* ECF
 14 No. 1209.

15 Although Magistrate Judge Ferenbach granted Oracle’s request in part, he did *not*, as
 16 Oracle now claims, “reject[]” Rimini’s concerns about the need to enforce the Court’s
 17 separation orders. *See* Mot. at 9. Rather, he permitted Oracle to serve discovery into what
 18 Oracle “contend[ed] would violate Judge Hicks’ injunction,” deferring any decision on whether
 19 such evidence regarding Process 2.0 could actually establish a violation of the injunction. ECF
 20 No. 1232 at 2. Judge Ferenbach did not address, let alone vacate or overrule, this Court’s
 21 separation orders; nor did he rule on whether this Court’s injunction could be enforced against
 22 Process 2.0. *See* ECF No. 1218 at 40:10–11, 41:19 (Judge Ferenbach explaining he was “just
 23 doing the discovery,” and not ruling on “if those new practices actually violate the terms of the
 24 injunction”). Indeed, it would be improper for Judge Ferenbach to overrule this Court’s
 25 separation orders or rule on the enforceability of the injunction as to Process 2.0. As Oracle
 26 and this Court have acknowledged elsewhere, a ruling on discovery does not expand, or
 27 otherwise alter, the scope of an injunction. *See* ECF No. 1333 at 19 (citing *Rimini II*, ECF No.
 28 1237 at 4).

1 **E. After Oracle Served an Expert Report Making Clear Its Intent to Violate this**
 2 **Court’s Separation Orders, Rimini Filed a Motion to Enforce Those Orders**

3 On January 31, 2020, Oracle served the “contempt” report of its technical expert, Ms.
 4 Barbara Frederiksen-Cross, which revealed—as Rimini had predicted, Oracle had previously
 5 disclaimed, and no court has ever addressed—Oracle’s intention to base its forthcoming
 6 contempt proceedings on Process 2.0. *See* ECF No. 1323 at 12. The confirmation that Oracle
 7 would do *exactly the opposite* of what it repeatedly told this Court it would do prompted Rimini
 8 to file its Motion to Enforce the separation orders and judgment. The Motion to Enforce is fully
 9 briefed, and will be decided by the Court in due course. But since the filing of that Motion to
 10 Enforce is the act for which Oracle seeks sanctions, it bears reiterating the parties’ positions in
 11 that motion:

12 Rimini’s Motion to Enforce asks this Court to enforce its own separation orders
 13 requiring that Process 2.0 be litigated solely in *Rimini II*. *See* ECF No. 1323; *see also* ECF No.
 14 723 at 3; ECF No. 1164 at 9. This Court-ordered separation between *Rimini I* (involving
 15 “Process 1.0,” which Rimini ceased using in 2014) and *Rimini II* (which involves “Process 2.0,”
 16 which Rimini has used since) is the law of the case, and indeed, a separation that Oracle had
 17 (until recently) repeatedly *insisted* that this Court observe. *See* ECF No. 1323 at 16–19.
 18 Enforcing this separation also protects Rimini’s constitutional rights to a full and fair
 19 determination of the lawfulness of Process 2.0—which is a set of new support processes that
 20 Rimini adopted to comport with this Court’s summary judgment rulings, and which have not
 21 yet been adjudicated on the merits. *See id.* at 19–23.

22 Oracle opposes Rimini’s Motion to Enforce, but without articulating a clear basis to do
 23 so. Indeed, Oracle’s opposition hardly offers any response to Rimini’s arguments at all, and in
 24 fact only includes one passing citation to the actual orders of this Court that Rimini’s Motion
 25 to Enforce seeks to enforce. *See generally* ECF No. 1333. As Rimini pointed out in its reply,
 26 Oracle’s opposition fails to address the fact that Oracle is judicially estopped from reversing its
 27 prior litigation position regarding the separation between *Rimini I* and *Rimini II*. Instead,
 28 Oracle’s opposition mischaracterizes Rimini’s Motion to Enforce as one that is either seeking
 29 “reconsideration” or has been “waived” (*id.* at 8–11); suggests that this Court and/or the Ninth

1 Circuit had somehow disturbed the separation orders (*id.* at 11–12); and ignores any
 2 constitutional concerns with having Process 2.0 adjudicated for the very first time in summary
 3 contempt proceedings (especially where the parties have already litigated for years to develop
 4 a full factual record on Process 2.0 so that it can be squarely adjudicated in *Rimini II*).

5 Apparently coming up short on the merits in its opposition to Rimini’s Motion to
 6 Enforce, Oracle also filed this Motion for Sanctions.

7 III. ARGUMENT

8 As a matter of law, a party cannot be sanctioned for asking a court to enforce its own
 9 orders as the law of the case. Oracle accuses Rimini of “re-re-re-re-re-arguing” things that
 10 no court has ever ruled on, namely, whether Oracle is violating the separation orders. *See Mot.*
 11 at 2. But it cannot be sanctionable for Rimini to maintain a consistent position in litigation by
 12 hewing to this Court’s clear rulings and asking that Oracle be required to do the same. Rimini
 13 has abided by this Court’s orders; Oracle is flouting them. Indeed, it was Oracle that convinced
 14 this Court to enter a series of orders separating *Rimini I* from *Rimini II*; today, Oracle is not
 15 only blatantly violating those orders, but pretending that they do not exist. It is beyond the pale
 16 for Oracle to suggest that Rimini and its counsel could be *sanctioned* for calling out Oracle’s
 17 rank hypocrisy and contradictory representations to this Court and to the Ninth Circuit—not to
 18 mention Oracle’s own ongoing disregard of numerous orders of this Court. Oracle persuaded
 19 this Court to rule: “Rimini’s new service support model is not relevant to any claim or issue
 20 in [*Rimini I*]” and “all claims, issues, and evidence related to the new support model are being
 21 addressed solely in [*Rimini II*.]” ECF No. 723 at 3 (emphasis added). Oracle made its bed and
 22 now must lie in it. As Rimini’s Motion to Enforce explains in detail, Oracle’s position in the
 23 contempt proceedings is absolutely irreconcilable with this order (and several others in the same
 24 vein). *See ECF No. 1323 at 14–19.* The suggestion that Rimini can be sanctioned, whether
 25 under Rule 11, 28 U.S.C. § 1927, or the Court’s inherent authority, for moving this Court to
 26 enforce the plain meaning of the separation orders, is absurd and a waste of the Court’s time.
 27 The Court should deny Oracle’s Motion for Sanctions.

1 **A. Rimini’s Motion to Enforce Is Meritorious and Thus Not Sanctionable**

2 Oracle’s Motion for Sanctions fails out of the gate for the simple reason that Rimini’s
 3 Motion to Enforce is meritorious, is grounded in the plain language as well as a good faith
 4 interpretation of this Court’s previous orders and related legal doctrines, and should be granted.
 5 It should go without saying that a litigant cannot be sanctioned for filing a meritorious motion.

6 Oracle’s Motion for Sanctions is hubristic, seeking sanctions on a *pending* motion that
 7 this Court has not even had the chance to rule on. As explained in Rimini’s Motion to Enforce
 8 briefing, the law of the case, judicial estoppel, and various constitutional and equitable
 9 principles uniformly require this Court to enforce the separation orders that were entered in this
 10 case. *See* ECF No. 1323 at 14–23. Oracle has no substantive response, spending all 21 pages
 11 of its opposition addressing irrelevant arguments, all the while steering clear of any
 12 acknowledgment, much less discussion, of this Court’s separation orders. *See generally* ECF
 13 No. 1333. Ignoring those decisions is the only way that Oracle can avoid addressing its own
 14 contradictory positions on the scope of the injunction. On the merits, the Motion to Enforce
 15 can only be granted.

16 Oracle’s Motion for Sanctions appears to be Oracle’s effort to shift the focus from its
 17 own misconduct in violating the Court’s separation orders to a baseless and unprofessional
 18 attack on Rimini and its counsel. This effort should not be tolerated. The Motion to Enforce
 19 stands or falls on its own merits, and the Court has all that it needs to decide it. Yet regardless
 20 of how the Court rules on the Motion to Enforce, the idea that moving to enforce preexisting
 21 orders is *sanctionable* (indeed, before the motion has even been ruled on) will accomplish the
 22 exact *opposite* of what Rule 11 is designed to do by “chilling zealous advocacy.” *Hudson v.*
23 Moore Bus. Forms, Inc., 836 F.2d 1156, 1160 (9th Cir. 1987). Because Rimini’s Motion to
 24 Enforce is *correct* and maintains consistent and defensible positions based on this Court’s prior
 25 orders, neither Rimini nor Rimini’s counsel should be sanctioned for filing it.

26 **B. Asking the Court to Enforce the Orders and Judgment Previously Entered in this
 27 Case Does Not Violate Rule 11**

28 Oracle brings its Rule 11 Motion for Sanctions on two bases: that Rimini’s Motion to
 Enforce (1) is “frivolous,” “duplicative” and “not warranted by existing law,” and (2) was

brought for the “improper purpose” of delay and needlessly increasing litigation expense. Mot. at 10. Both fail.

1. *Rimini's Motion to Enforce Is Warranted By Existing Law and Is Not Frivolous or Duplicative.*

Contrary to Oracle’s argument (*see* Mot. at 10–11), not only is Rimini’s Motion to Enforce correct and “*warranted by existing law*” (Fed. R. Civ. P. 11(b)(2) (emphasis added)), but the separation orders *are the existing law*.

This Court “decided explicitly” that, for all purposes, *Rimini I*/Process 1.0 and *Rimini II*/Process 2.0 are entirely separate—that ruling is the “law of the case,” as set forth in Rimini’s Motion to Enforce. *Rebel Oil Co. v. Atl. Richfield Co.*, 146 F.3d 1088, 1093 (9th Cir. 1998); *cf. Jarrard v. CDI Telecomms.*, 408 F.3d 905, 915 (7th Cir. 2005) (“[j]udicial estoppel is intended to protect the courts from the litigatory shenanigans that would result if parties could, without limitation or consequence, swap litigation positions like hats in successive cases based on simple expediency or self-benefit”). Oracle never explains in its Motion for Sanctions how the Court’s words “Rimini’s new service support model [*i.e.*, Process 2.0] is not relevant to *any claim or issue*” in *Rimini I* (ECF No. 723 at 3 (emphasis added)) could be understood by anyone to mean their opposite.

Instead, Oracle asserts that Rimini’s Motion to Enforce is “duplicative” and thus sanctionable under the Ninth Circuit’s decision in *Nugget Hydroelectric, L.P. v. Pacific Gas & Electric Co.*, 981 F.2d 429 (9th Cir. 1992), and other cases involving already litigated matters. See Mot. at 10. *Nugget* is totally inapposite. That case involved a plaintiff who lost a “motion to compel production” of “millions of pages of documents” that were not “relevant” to his claims, and who then filed “a second motion to compel” that simply “duplicated” the first “unnecessarily burdensome and overly broad” motion—showing “an improper purpose of harassing” the defendant. *Nugget*, 981 F.2d at 438–39. By contrast, Rimini has *never* filed a motion to enforce the Court’s separation orders before, and therefore the Motion to Enforce that it did file cannot be duplicative, and Rimini cannot have had any improper purpose. Indeed, Rimini’s Motion to Enforce only became ripe when Oracle recently served its expert’s

1 “contempt” report, which finally confirmed that Oracle intended to violate those separation
 2 orders. Until that point, while Rimini had the foresight to predict that Oracle would violate the
 3 separation orders in this very way, and consistently raised those concerns to this Court and to
 4 the Ninth Circuit, Oracle sidestepped Rimini’s concerns by representing that its injunction was
 5 “tailored” to “prevent future occurrences of the conduct *adjudicated to constitute copyright*
 6 *infringement in this case*” (ECF No. 1117 at 23 (emphasis added)), and that the injunction was
 7 only intended to “track[] the scope of the infringing conduct” adjudicated in *Rimini I* (ECF No.
 8 1158 at 30:16–17).

9 Now that Rimini’s Motion to Enforce has squarely presented the issue for this Court,
 10 Oracle can no longer avoid the question. And without any substantive response to Rimini’s
 11 arguments (or explanations for its own about-face), Oracle relies on numerous
 12 mischaracterizations of orders and rulings from this Court and the Ninth Circuit to support its
 13 contention that it has already been held that Process 2.0 is legitimately within the reach of the
 14 *Rimini I* injunction. *See* Mot. 1–9. But, as explained above (*see supra* Part II.A–C), and in
 15 greater depth in Rimini’s Motion to Enforce, no court has ever held such a thing—explicitly or
 16 implicitly—at any point in this litigation. Indeed, how could a court do so in the face of Oracle’s
 17 repeated assurances that the injunction *did not* reach Process 2.0, and Oracle’s own admission
 18 that attempting to stretch the injunction that far would constitute “bad faith”? ECF No. 1174 at
 19 17–18. It beggars belief, for instance, for Oracle to have “acknowledge[d]” to this Court “that
 20 cloud computing” “wasn’t at issue in *Rimini I*,” and that the parties would thus “fight” about
 21 “whether cloud constitutes the customers’ facilities” “in *Rimini II*” (ECF No. 1040 at 143:14–
 22 15, 17–18), and to *now seek to sanction* Rimini and its counsel on the basis that “cloud hosting”
 23 was *already decided* by the Ninth Circuit as covered by the *Rimini I* injunction (Mot. at 7). To
 24 repeat, Oracle’s argument before the Ninth Circuit that an injunction could lawfully reach
 25 unadjudicated conduct had *nothing to do with Rimini II*, and was based on a different dispute
 26 between the parties about which Process 1.0 aspects were, and were not, part of the jury’s
 27 liability verdict. *See* Oracle Answering Br. at 39–41, *Rimini I*, No. 18-16554 (9th Cir. Jan. 23,
 28 2019), ECF No. 23. That Rimini consistently *predicted* that Oracle would try to base its

1 forthcoming contempt proceedings on Process 2.0 in no way means that this Court or the Ninth
 2 Circuit held that doing so would be permissible, least of all when Oracle was denying it all
 3 along the way.

4 This Court should not credit Oracle’s argument that Rimini’s Motion to Enforce is
 5 “duplicative” simply because Rimini consistently warned that Oracle would attempt to use the
 6 injunction to prohibit Process 2.0—a prediction that turned out to be accurate when Oracle
 7 recently served its expert’s “contempt” report. Mot. at 2. Unlike Oracle’s flip-flop (first
 8 seeking the separation orders and now disavowing them), Rimini has litigated this case with
 9 consistency, raising its concerns at appropriate stages to ensure this Court has a complete set of
 10 facts and context for its rulings and that Rimini’s arguments are preserved for appellate review.
 11 Oracle cannot both cry waiver if an issue is not raised (even when an issue is not ripe), and
 12 complain that an argument is duplicative—and *sanctionable*—if it is preserved for appellate
 13 review. Indeed, Oracle’s attempt to punish Rimini for consistently and diligently litigating this
 14 case is all the more meritless given Oracle’s own record of arguing waiver against Rimini. *See,*
 15 e.g., ECF No. 1333 at 10–11 (claiming Rimini’s Motion to Enforce was “waived”). That Oracle
 16 argues in its Motion for Sanctions that Rimini’s Motion to Enforce is “duplicative”—while
 17 simultaneously arguing in its opposition brief that the *same* Motion to Enforce has been
 18 “waived”—is telling in its own right.

19 Even if this Court were to agree with Oracle’s erroneous arguments (despite the fact that
 20 neither this Court nor the Ninth Circuit has ever ruled the way Oracle suggests), Rimini’s
 21 Motion to Enforce was “made in good faith” and therefore sanctions would be unwarranted.
 22 *Hudson*, 836 F.2d at 1161 (internal quotation marks omitted). Given Oracle’s numerous
 23 representations that the injunction was in fact limited to Process 1.0, this Court’s order on the
 24 injunction also *holding* that it was limited to Process 1.0, Oracle’s statements to the Ninth
 25 Circuit that Process 2.0 was reserved for *Rimini II*, the Ninth Circuit panel’s statement that
 26 Process 2.0 was “not in front” of the Court on appeal, and the Ninth Circuit’s ultimate opinion
 27 that is silent as to Process 2.0, there was, *at a bare minimum*, a good faith basis for Rimini’s
 28 Motion to Enforce, even if this Court or the Ninth Circuit had, in fact, ruled in a way that

1 resembled Oracle’s revisionist history here. *See, e.g., Int’l Ass’n of Machinists & Aerospace*
 2 *Workers, Lodge 751 v. Boeing Co.*, 833 F.2d 165, 171–72 (9th Cir. 1987) (argument did not
 3 violate Rule 11 even though it had been litigated to final judgment before, because party had
 4 good faith legal basis to raise issue again); *Sendi v. NCR Comten, Inc.*, 624 F. Supp. 1205, 1207
 5 (E.D. Pa. 1986) (denying Rule 11 sanctions where second “identical” lawsuit was brought
 6 before the court had “made clear that [it] had considered and rejected” the arguments on which
 7 it was based); *cf. United States v. Lummi Nation*, 763 F.3d 1180, 1187 (9th Cir. 2014) (law of
 8 the case does not preclude an argument if previous panel decision can be read consistently with
 9 that argument or where previous panel opinion is “ambiguous”); *Hall v. City of Los Angeles*,
 10 697 F.3d 1059, 1067 (9th Cir. 2012) (mandate rule does not apply when the circuit does “not
 11 impose clear limits on the scope of the remand”).

12 Oracle’s attempt to seek a monetary sanction under Rule 11(b)(2) against Rimini, a
 13 represented party, is also frivolous. Rule 11 expressly forbids monetary sanctions against
 14 represented parties for violations of Rule 11(b)(2). *See Fed. R. Civ. P. 11(c)(5)(A); see, e.g.,*
 15 *Sokolowski v. Adelson*, No. 14-111-JCM, 2016 WL 344508, at *3 (D. Nev. Jan. 27, 2016).
 16 Oracle’s disregard for the rules is further evidence that its Motion for Sanctions is meritless, an
 17 abuse of this litigation, and a waste of the parties’ and the Court’s time.

18 **2. *Rimini’s Motion to Enforce Was Not Filed for Any Improper Purpose.***

19 Oracle’s Motion for Sanctions should also be denied because Rimini’s Motion to
 20 Enforce was not “presented for any improper purpose, such as to harass, cause unnecessary
 21 delay, or needlessly increase the cost of litigation.” Fed. R. Civ. P. 11(b)(1).

22 The “improper” purpose Oracle posits here—to “needlessly increase the cost of
 23 litigation” (Mot. at 10)—makes no sense. Rimini never would have brought the Motion to
 24 Enforce had *Oracle* not changed its position and sought “to go beyond” the *Rimini I* injunction
 25 in “contempt proceedings” to “challenge conduct [*i.e.*, Process 2.0] that is currently at issue in
 26 *Rimini II
 27 never do such a thing—indeed, it said that doing so would be in “bad faith.” *Id.* at 17–18. But
 28 it did, and so Rimini asked this Court to enforce its separation orders. Far from seeking to*

1 “delay” or “needlessly increase” litigation expense, Rimini’s Motion to Enforce will *streamline*
 2 the case and *decrease* litigation expense by reinforcing this Court’s previous orders as to the
 3 proper bounds of Oracle’s forthcoming contempt motion. Both sides will spend *less* time and
 4 money briefing, preparing, and arguing that motion if the separation orders are enforced, and
 5 Oracle abides this Court’s order that “Rimini’s new service support model is not relevant to any
 6 claim or issue in [Rimini I]” and that “all claims, issues, and evidence related to the new support
 7 model are being addressed solely in [Rimini II].” ECF No. 723 at 3 (emphasis added). Oracle’s
 8 change in position is what occasioned Rimini’s Motion to Enforce. And it is not “improper to
 9 attempt to enforce a purported legal right,” “which may or may not prove meritorious,” and
 10 which “might save everyone the trouble of litigating” other matters. *Eclipse Grp. LLP v. Target*
 11 *Corp.*, No. 15-1411, 2016 WL 8395077, at *10 (S.D. Cal. May 26, 2016) (denying Rule 11
 12 sanctions).

13 Under the plain language of this Court’s orders—language Oracle sought but cannot
 14 now bring itself to even cite, let alone address or explain—*Rimini I*/Process 1.0 are separated
 15 from *Rimini II*/Process 2.0. Rimini’s Motion to Enforce is meritorious and, even if it were *not*,
 16 it was brought in good faith for legitimate purposes.

17 **C. Asking this Court to Enforce the Orders and Judgment Previously Entered in this
 18 Case Does Not Warrant Sanctions Under Either 28 U.S.C. § 1927 or the Court’s
 Inherent Authority**

19 Oracle also seeks sanctions against Rimini and Rimini’s counsel under 28 U.S.C. § 1927
 20 and this Court’s inherent authority. “[S]anctions authorized under section 1927 are not to be
 21 lightly imposed; nor are they to be triggered because a lawyer vigorously and zealously pressed
 22 his client’s interests.” *Colucci v. N.Y. Times Co.*, 533 F. Supp. 1011, 1013–14 (S.D.N.Y.
 23 1982). And similarly, “a court’s inherent power must be utilized with caution and restraint,”
 24 being “reserved for the ‘rare and exceptional case’” where “counsel’s actions are in ‘bad faith’
 25 or are ‘tantamount to bad faith.’” *United States v. Rico*, 619 F. App’x 595, 601 (9th Cir.
 26 2015). Oracle fails to point to any evidence that could possibly support a finding of bad
 27 faith. Indeed, Rimini consistently *abided* this Court’s separation orders and predicted
 28 (accurately) that Oracle would seek to *violate* them.

1 Sanctions are obviously inappropriate where, as here, there is in fact “an actual
 2 controversy to be resolved,” despite the moving party’s claim that an argument is
 3 “spurious.” *Sikes v. Rubin Law Offices, P.C.*, 102 F.R.D. 259, 263 (N.D. Ga. 1984). Contrary
 4 to Oracle’s assertion that Rimini and its counsel have “reassert[ed] their same previously
 5 rejected arguments” (Mot. at 12), no court has ever “rejected” Rimini’s arguments. None of
 6 the orders from this Court or the Ninth Circuit has addressed the question of whether this Court
 7 should follow its prior orders separating *Rimini I* from *Rimini II*, and whether Oracle is violating
 8 those orders. As explained above, even when Rimini raised these concerns, Oracle actually
 9 *foreclosed* the Court’s consideration of these arguments by consistently representing to this
 10 Court and to the Ninth Circuit that the injunction Oracle was seeking only covered Process 1.0.
 11 See, e.g., ECF No. 488 at 8; ECF No. 646 at 5; ECF No. 1158 at 30:16–17; ECF No. 1117 at
 12 20 n.3. It is only now that Oracle has reversed course and revealed its intent to disavow its
 13 earlier position and this Court’s separation orders that Rimini’s Motion to Enforce became
 14 necessary. Thus, the controversy to be resolved is one of *Oracle*’s own making. As explained
 15 in its Motion to Enforce, Rimini simply contends that this Court’s separation orders mean
 16 exactly what they say: “Rimini’s new service support model is not relevant to any claim or issue
 17 in [*Rimini I*]” and “all claims, issues, and evidence related to the new support model are being
 18 addressed solely in [*Rimini II*.]” ECF No. 723 at 3. Oracle once agreed that this created “a
 19 clear dividing line” between *Rimini I* and *Rimini II* (ECF No. 593 at 11; *id.* at 13 & n.6), that it
 20 would be “bad faith” to use the *Rimini I* injunction to apply to *Rimini II* conduct (ECF No. 1174
 21 at 17–18), and that Process 2.0 was a “fight we can have in *Rimini II*” (ECF No. 1040 at 143:19–
 22 20; *see also* ECF No. 1347-3 at 25:14, 17–20). Reversing course, Oracle now contends that
 23 this Court and the Ninth Circuit have held otherwise. There is no basis whatsoever for findings
 24 of bad faith or vexatiousness on Rimini’s or its counsel’s part—there is a dispute because
 25 *Oracle* has changed its position, and *Oracle* is therefore responsible for any supposed
 26 multiplication of the proceedings.

27 Neither of the cases Oracle cites is any help here. *See* Mot. at 12. *Hussein v. Dugan*,
 28 No. 05-381-PMP, 2009 WL 10709253 (D. Nev. Sept. 8, 2009), held that the filing of a

1 complaint which lacked “any evidence to support [its] accusations” could be sanctioned. *Id.* at
 2 *2. And *Aboulafia v. Mortgage Electronic Registration Systems, Inc.*, No. 12-2001-GMN,
 3 2013 WL 2558726 (D. Nev. June 8, 2013), involved a party who lost a case because of a statute
 4 foreclosing his claim and “case law directly on point,” who then brought “virtually identical
 5 litigation.” *Id.* at *6. Neither case has anything to do with the posture here: this case rests on
 6 orders that Oracle cannot dispute and that say exactly what they mean: *Rimini I* and Process
 7 1.0 are for all purposes separate from *Rimini II* and Process 2.0. Oracle points to no order
 8 undoing this Court’s separation orders.

9 Oracle’s Motion for Sanctions is also frivolous in seeking to impose a Section 1927
 10 sanction on Rimini’s counsel’s law firm. It is black letter law in this circuit that “28 U.S.C.
 11 § 1927 does not permit the award of sanctions against a law firm.” *Kaass Law v. Wells Fargo
 12 Bank, N.A.*, 799 F.3d 1290, 1293 (9th Cir. 2015). This is just further evidence that Oracle’s
 13 Motion for Sanctions is needlessly driving up litigation expense and wasting the parties’ and
 14 the Court’s time.

15 IV. CONCLUSION

16 For the foregoing reasons, the Court should deny Oracle’s Motion for Sanctions.

17 Dated: May 26, 2020

18 GIBSON, DUNN & CRUTCHER LLP

20 By: /s/ Eric D. Vandevelde
 21 Eric D. Vandevelde

22 *Attorneys for Defendant
 Rimini Street, Inc.*